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No.

In the

Supreme Court of the United States

JORGE LUIS MACHUCA GONZALEZ; MARTHA PATRICIA LOPEZ GUERRERO, Individually And As Heirs And Representatives Of The Estate Of Luis Pablo Machuca Lopez, Deceased,

Petitioners,

v.

CHRYSLER CORPORATION, also known as Chrysler Motors Corporation; TRW INC; TRW VEHICLE SAFETY SYSTEMS INC; MORTON INTERNATIONAL, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Fifth Circuit give due consideration to this Court's holding in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), that "where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate forum," or is that merely a "term of art"?

2. Should foreign nationals who are induced to buy domestic products while in the United States be deprived of access to United States courts categorically so long as they are injured by those products abroad and have a only theoretical legal claim available to them abroad?

3. Should courts conducting forum non conveniens analysis ignore the economic realities of dismissal on the grounds that it is too cumbersome, or should that be a factor in the analysis of every case?

PARTIES TO THE PROCEEDING

Including the parties named in the captions of this Petition, the parties are:

Jorge Luis Machuca Gonzalez and Martha Patricia Lopez Guerrero ("The Machucas"), are two individuals who reside in Mexico.

Chrysler Corporation, now known as DaimlerChrysler Corporation. It is a wholly owned subsidiary of DaimlerChrylser Corporation North America Holding Corporation, which in turn is a wholly owned subsidiary of Daimler Chrysler AG, a stock corporation organized under the laws of the Federal Republic of Germany. DaimlerChrysler, AG's ordinary shares are publicly traded on the principal stock exchanges in the New York Stock Exchanges and abroad.

Morton International, now known as Autoliv ASP, Inc is a public corporation whose shares are publicly traded on the principal stock exchanges in the New York Stock Exchanges and abroad.

TRW Inc., is a public corporation whose shares are publicly traded on the principal stock exchanges in the New York Stock Exchanges and abroad.

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IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

JORGE LUIS MACHUCA GONZALEZ and MARTHA PATRICIA LOPEZ GUERRERO, INDIVIDUALLY AND AS HEIRS AND REPRESENTATIVES OF THE ESTATE OF LUIS PABLO MACHUCA GONZALEZ, DECEASED
Petitioners,

V.

CHRYSLER CORPORATION A/K/A CHRYSLER MOTORS CORPORATION, TRW INC., TRW VEHICLE SAFETY SYSTEMS INC., AND MORTON INTERNATIONAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JORGE LUIS MACHUCA GONZALEZ and MARTHA PATRICIA LOPEZ GUERRERO, Petitioners, by undersigned counsel, under appropriate rules of this Court, request that this Court issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

This is a products liability case with far reaching implications. The Machucas filed this wrongful death suit in the United States District Court for the Southern District of Texas, Brownsville Division. Prior to the initiation of any discovery, each of the defendants (respondents herein) filed (1) a motion to apply

Mexican law, (2) a motion to transfer venue, and (3) a motion to dismiss on forum non conveniens grounds.

On February 18, 2000, the district court entered an order dismissing the case on forum non conveniens grounds. A final, appealable judgment was signed on October 25, 2000. *Appendix C.* The Machucas timely perfected an appeal to the Fifth Circuit Court of Appeals.

On August 20, 2002, the Court of Appeals for the Fifth Circuit affirmed with an opinion reported in 301 F.3d 377 (Fed. 3). *Appendix A.* The Machucas filed a Motion for Rehearing En Banc, but said motion was denied on October 9, 2002. *Appendix B.*

JURISDICTION

The opinion of the Fifth Circuit Court of Appeals was handed down on August 20, 2002. Rehearing was denied on October 9, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254 and 1257.

STATUTORY PROVISIONS INVOLVED

See Appendix D.

STATEMENT OF THE CASE

Jorge Luis Machuca Gonzalez and his wife brought this products liability action against the American companies that designed, manufactured, and marketed the products that killed their three-year-old son. Though they reside in Mexico, the Machucas made numerous visits to Texas to shop and purchase consumers goods. While in Texas, the Machucas learned about a vehicle designed by Chrysler that was

recommended for its safety, and decided to purchase it. Their son was killed months later on May 21, 1996, when the passenger airbag on his mother's 1996 Chrysler LHS deployed in a low speed front-end collision.

Chrysler marketed and sold the vehicle in Mexico, but it did not place any warnings in Spanish, nor did it provide a Spanish language owners manual. The Machucas exercised their right under Texas law to file suit in the Southern District of Texas because all of the products at issue were designed in the United States, most were manufactured in the United States (the car was assembled in Canada), and the relationship between the parties had its nexus in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 73.031(a)(4). In all respects, the Machucas stood on the same position as any Texas consumer when the first learned about the Chrysler LHS.

Though the Machucas have a right to bring suit in the country where the wrongs occurred under domestic law, they were deprived of that right by the dismissal of their case on forum non conveniens grounds. The Fifth Circuit has concluded that it is of no import that the costs of litigating this case in Mexico may so greatly exceed the maximum legal recovery (approximately $2,500) in that country, that it guarantees no action will proceed abroad. It opines that consideration of such economic realities is too cumbersome to analyze.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's opinion ignores the purpose of forum non conveniens doctrine, conflicts with the directives of *Gulf Oil Corp. v. Gilbert*, 830 U.S. 501, 508 (1947) and *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), and conflicts with the holdings of other federal

circuit courts, like *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983). This Court has stated that dismissal is not appropriate unless the balance of all relevant factors strongly favors the defendant. *Gulf Oil Corp.*, 830 U.S. at 508. The law in the Fifth Circuit now stands at odds with this Court's analysis, which states that if "the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate forum." *Piper Aircraft Co.*, 454 U.S. at n. 22.

The facts and legal questions at issue in this case are of exceptional importance, given the frequency of their occurrence, and the incentives borne out of the opinion. The underlying opinion sets a dangerous precedent: domestic companies may design, manufacture, and market dangerous products, send them abroad, and face *no accountability* in the States if, by chance, a consumer happens to get injured abroad. Moreover, the opinion may have a chilling effect on commerce between United States and Mexico. Foreign nationals who are induced to buy domestic products while in the United States, will not have access to domestic courts to rectify the harm that these products may cause. This effect is clearly at odds with United States policy memorialized in the North American Free Trade Agreement.

Although there is no principled justification for doing so, the Fifth Circuit discards a foreign plaintiff's choice to sue in the United States even though (a) the decisions at issue occurred in the United States, (b) the plethora of witnesses are in the United States, (c) all documents are in English and would need to be translated abroad, (d) a foreign jurisdiction does not acknowledge key causes of action, (e) the subject vehicle is in the United States, and (f) the foreign jurisdiction imposes such severe restrictions on

recovery that all parties agree the action would never proceed in that forum. If permitted to stand, the Fifth Circuit's opinion will allow the evisceration of an entire class of plaintiffs' rights in broad strokes without just cause or consideration of important and relevant factors.

II.
ARGUMENT AND AUTHORITIES

The outcome of this case was reached because the lower courts failed to acknowledge the instruction of *Piper Aircraft v. Reyno*, and failed to engage in the analysis of relevant factors mandated by this court in *In re Air Crash Near New Orleans, In re Air Crash Disaster Near New Orleans*, 821 F.2d 1165 (5th Cir. 1987), *vacated on other grounds*. By failing to conduct proper forum non conveniens and choice of law analysis, this Court's opinion works an injustice and is at odds with the opinions of other federal circuit courts.

A. The panel's opinion conflicts with the language and spirit of this Court's prior holdings.

The Fifth Circuit's cursory analysis wrongfully provides trial courts with nearly unfettered discretion to use the forum non conveniens doctrine as a docket-clearing device without due consideration to the adequacy of the "alternative" forum. The Fifth Circuit has dismissed this Court's discussion in *Piper Aircraft* regarding "clearly unsatisfactory" forums as merely a "term of art." *Appendix A at p. 6.*

Under the guise of not wanting to appear patronizing, it refuses it to cast a critical eye on the law of the alternate forum. *Appendix B at p. 9.* In so doing,

it articulates a rule that ignores this Court's instruction to consider the circumstances abroad, and not simply conclude that an alternate forum is "adequate" if some conceptual theory of recovery is available. *Gulf Oil Corp. v. Gilbert*, 830 U.S. 501, 508 (1947); *Piper Aircraft*, 454 U.S. n. 22.

The Fifth Circuit's refusal to grapple with the particular facts, out of a concern that it would begin a "rudderless exercise" leading to uncertainty in every case, distorts the holdings of this Court. None of the justices who have analyzed this case to date have acknowledged the obvious: courts must consider all relevant factors, indulge presumptions in favor of the chosen forum, and dismiss only if the particular factors clearly justify it. *Gulf Oil Corp. v. Gilbert*, 830 U.S. 501, 508 (1947).

Under the Fifth Circuit's view, courts should not even consider the degree to which dismissal of a claim, and the application of foreign law, might impact a plaintiff because such analysis would be either "paternalistic" or too cumbersome. This contradicts the language of *Piper Aircraft* and renders forum non conveniens analysis a hollow exercise.

B. The Fifth Circuit's opinion and the forum non conveniens analysis it mandates is in conflict with other federal circuits.

The Fifth Circuit holds that there is no need in forum non conveniens analysis to consider what in reality could be the single most important consideration: whether a case will ever proceed in a foreign jurisdiction if it is dismissed. By refusing to incorporate this basic issue into its analysis, the Fifth Circuit conflicts with that of the other federal circuit courts,

such as the Eighth Circuit, as expressed in *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042 (1984).

Taking its cue from *Piper Aircraft*, the Eight Circuit has stated that courts "must be alert to the realities of the plaintiff's position, financial and otherwise, and his or her ability as a practical matter to bring suit in the alternative forum." *Lehman*, 713 F.2d at p. 346. It properly held that the "[e]mphasis on the district court's discretion ... must not overshadow the central principle of the *Gilbert* doctrine that unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Id.* at p. 342. In *Lehman*, the plaintiff, like Machuca, had been influenced by advertisements in the United States to make a purchase, but he was injured abroad. *Id.* There, the appellate court reversed the trial court's dismissal of the cause of action. *Id.*

The Fifth Circuit will "neither gainsay nor approve the holding of *Lehman*," but it effectively does so when it declined to consider the "practical and economic realities lying at the base of this dispute." *Appendix B at p. 10 n.8.* It distinguishes the two cases by stating that Machucas did not present private or public interest factors that pointed towards Texas, *Id.*, but in doing so it, by necessity, glosses over the detail that most of the relevant factors point towards litigation in the United States. In fact, *all* the culpable conduct at issue occurred in the United States. Thus, this opinion stands for the proposition that the locus of the culpable conduct in products is irrelevant to forum non conveniens analysis in the Fifth Circuit.

The Fifth Circuit reached its conclusion because it cannot articulate a "guiding principal" to decipher

when the remedy available in another forum is "clearly unsatisfactory." *Id.* However, its refusal to find that practical, economic factors are relevant to the forum non conveniens analysis is not only at odds with this Court, but is also at odds with other circuit courts. *See eg. Hotvedt v. Schlumberg*, 914 F.2d 79, 83 (5th Cir. 1990) (reversing the dismissal of claim where injury occurred in Brazil); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1246-47 (7th Cir. 1990) (courts must consider the disadvantages of law and procedure abroad). Indeed, one other circuit has explained,

> In some instances, invocation of [forum non conveniens] doctrine will send the case to a jurisdiction which has imposed such severe monetary limitations on recovery as to eliminate the likelihood that the case will be tried. When it is obvious that this will occur, discussion of convenience of witnesses takes on a Kafkaesque quality – everyone knows that *no* witnesses will ever be called to testify.

Irish Nat. Ins. Co., Ltd., v. Aer Lingus Teoranta, 739 F.2d 90, 91 (2nd Cir. 1984) (emphasis added). Without due consideration given to the economic realities of the parties, any consideration of the "adequacy" of an alternative is farcical.

C. This case involves issues of exceptional importance to consumers, producers, and manufacturers in the United States and abroad.

The Fifth Circuit's opinion will have a substantial effect that the opinion will have on domestic companies that design, produce, and market products to foreigners

both domestically and abroad. To be sure, the majority of states in this country have passed strict liability laws to hold companies that design, manufacture, or market dangerous products accountable domestically. Yet, our courts are utilizing a discretionary doctrine to exempt our own companies from accountability for the dangerousness of their products designed, manufactured, and marketed domestically, but sent abroad for sale.

In an era of globalization of markets, and of free trade between the United State and Mexico, the flow of goods between countries is greater than ever. It is in the United States' interest to encourage consumer confidence on domestic products. Our laws give Mexicans in circumstances like the Machucas the right to bring suit in the United States. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 73.031(a)(4). Though this class of litigants is indisputably entitled to some deference in favor of their chosen forum, they are being afforded none. Any court following the logic of the Fifth Circuit may simply use forum non conveniens as a docket-clearing device to strip litigants of their rights in the United States altogether, rather even consider the transfer of a case to another domestic state that might be more suitable.

Unless overturned, this cause will long stand as a basis for domestic designers, producers, and marketers of inherently dangerous products to escape any accountability in their own backyard, so long as the consumers injured by their products live far away. When Mr. Machuca came to Houston, Texas, spoke with Chrysler sales representatives, and was wooed into buying a luxury sedan for his wife, he stood on the same footing as any domestic consumer. However, because he is Mexican, and his son happened to be killed outside

of the United States, he cannot pursue his claims in the United States against the American companies that designed, manufactured, and marketed the airbag that killed their son. The Fifth Circuit should have considered these facts, together with the undisputed reality that all parties agree that the approximately $2,500 potential recovery in Mexico for this tragedy makes the remedy abroad a mere fiction.

VII.
CONCLUSION

Wherefore, premises considered, Petitioners JORGE LUIS MACHUCA GONZALEZ and MARTHA PATRICIA LOPEZ GUERRERO request that this Court GRANT their Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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(Any footnotes trail the end of each document.)
No. 01-40012

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JORGE LUIS MACHUCA GONZALEZ; MARTHA PATRICIA LOPEZ GUERRERO, Individually And As Heirs And Representatives Of The Estate Of Luis Pablo Machuca Lopez, Deceased,
Plaintiffs-Appellants,

v.

CHRYSLER CORPORATION,
Etc.; ET AL.,
Defendants,

CHRYSLER CORPORATION, also known as Chrysler Motors Corporation; TRW, INC.; TRW VEHICLE SAFETY SYSTEMS, INC.; MORTON INTERNATIONAL, INC.,
Defendants-Appellees.

August 20, 2002, Decided

COUNSEL:
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JUDGES:
Before JOLLY, JONES, and BARKSDALE, Circuit Judges.

OPINIONBY:
E. GRADY JOLLY

OPINION:

E. GRADY JOLLY, Circuit Judge:

In this forum non conveniens case, we first consider whether the cap imposed by Mexican law on the recovery of tort damages renders Mexico an inadequate forum for resolving a tort suit by a Mexican citizen against an American manufacturer and an American designer of an air bag. Holding that Mexico – despite its cap on damages – represents an adequate alternative forum, we next consider whether the district court committed reversible error when it concluded that the private and public interest factors so strongly pointed to Mexico that Mexico, instead of Texas, was the appropriate forum in which to try this case. Finding no reversible error, we affirm the district court's judgment dismissing this case on the ground of forum non conveniens.

I

In 1995, while in Houston, the plaintiff, Jorge Luis Machuca Gonzalez ("Gonzalez") n1 saw several magazine and television advertisements for the Chrysler LHS. The advertisements sparked his interest. So, Gonzalez decided to visit a couple of Houston car dealerships. Convinced by these visits that the Chrysler LHS was a high quality and safe car, Gonzalez purchased a Chrysler LHS upon returning to Mexico.

On May 21, 1996, the wife of the plaintiff was involved in a collision with another moving vehicle while driving the Chrysler LHS in Atizapan de Zaragoza, Mexico. The accident triggered the passenger-side air bag. The force of the air bag's deployment instantaneously killed Gonzalez's three-year-old son, Pablo.

Seeking redress, Gonzalez brought suit in Texas district court against (1) Chrysler, as the manufacturer of the automobile; (2) TRW, Inc. and TRW Vehicle Safety Systems, Inc., as the designers of the front sensor for the air bag; and (3) Morton International, Inc., as designer of the air bag module. Gonzalez asserted claims based on products liability, negligence, gross negligence, and breach of warranty. As noted, Gonzalez chose to file his suit in Texas. Texas, however, has a tenuous connection to the underlying dispute. Neither the car nor the air bag module was designed or manufactured in Texas. The accident took place in Mexico, involved Mexican citizens, and only Mexican citizens witnessed the accident. Moreover, Gonzalez purchased the Chrysler LHS in Mexico (although he shopped for the car in Houston, Texas). Because of these factors, the district court granted the defendants' identical motions for dismissal on the ground of forum non conveniens. n2 Gonzalez now appeals.

II

A

The primary question we address today involves the threshold inquiry in the forum non conveniens analysis: Whether the limitation imposed by Mexican law on the award of damages renders Mexico an inadequate alternative forum for resolving a tort suit brought by a Mexican citizen against a United States manufacturer.

We should note at the outset that we may reverse the grant or denial of a motion to dismiss on the ground of forum non conveniens only "where there has been a clear abuse of discretion." Baumgart v. Fairchild Aircraft Corp., 981 F.2d 824, 835 (5th Cir. 1993).

The forum non conveniens inquiry consists of four considerations. First, the district court must assess whether an alternative forum is available. See Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 221 (5th Cir. 2000). An alternative forum is available if "the entire case and all parties can come within the jurisdiction of that forum." In re Air Crash Disaster Near New Orleans, La. on July 9, 1982, 821 F.2d 1147, 1165 (5th Cir. 1987) (en banc), vacated on other grounds sub nom., Pan Am. World Airways, Inc. v. Lopez, 490 U.S. 1032, 104 L. Ed. 2d 400, 109 S. Ct. 1928 (1989). Second, the district court must decide if the alternative forum is adequate. See Alpine View, 205 F.3d at 221. An alternative forum is adequate if "the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court." In re Air Crash, 821 F.2d at 1165 (internal citation omitted).

If the district court decides that an alternative forum is both available and adequate, it next must weigh various private interest factors. See Baumgart, 981 F.2d at 835-36. If consideration of these private interest factors counsels against dismissal, the district court

moves to the fourth consideration in the analysis. At this stage, the district court must weigh numerous public interest factors. If these factors weigh in the moving party's favor, the district court may dismiss the case. Id. at 837.

B

1

The heart of this appeal is whether the alternative forum, Mexico, is adequate. n3

The jurisprudential root of the adequacy requirement is the Supreme Court's decision in Piper Aircraft Co. v. Reyno, 454 U.S. 235, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981). The dispute in Piper Aircraft arose after several Scottish citizens were killed in a plane crash in Scotland. Id. at 238. A representative for the decedents filed a wrongful death suit against two American aircraft manufacturers. Id. at 240. The Court noted that the plaintiff filed suit in the United States because "[U.S.] laws regarding liability, capacity to sue, and damages are more favorable to her position than are those of Scotland." Id. The Court further noted that "Scottish law does not recognize strict liability in tort." Id. This fact, however, did not deter the Court from reversing the Third Circuit. In so doing, the Court held that "although the relatives of the decedent may not be able to rely on a strict liability theory, and although their potential damage award may be smaller, there is no danger that they will be deprived of any remedy or treated unfairly [in Scotland]." Id. at 255. Thus, [HN3] the Court held that Scotland provided an adequate alternative forum for resolving the dispute, even though its forum provided a significantly lesser remedy. In a footnote, however, Justice Marshall observed that on rare occasions this may not be true:

> At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum. Ordinarily, this requirement will be satisfied when the defendant is "amenable to process" in the other jurisdiction. In rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute.

Id. at 255 n.22 (emphasis added)(internal citation omitted).

Citing the language from this footnote, Gonzalez contends that a Mexican forum would provide a clearly unsatisfactory remedy because (1) Mexican tort law does not provide for a strict liability theory of recovery for the manufacture or design of an unreasonably dangerous product and (2) Mexican law caps the maximum award for the loss of a child's life at approximately $ 2,500 (730 days' worth of wages at the Mexican minimum wage rate). Thus, according to Gonzalez, Mexico provides an inadequate alternative forum for this dispute.

2

(a)

Gonzalez's first contention may be quickly dismissed based on the explicit principle stated in Piper Aircraft. As noted, there the Supreme Court held that Scotland's failure to recognize strict liability did not render Scotland an inadequate alternative forum. Id. at 255.

There is no basis to distinguish the absence of a strict products liability cause of action under Mexican law from that of Scotland. n4 Piper Aircraft therefore controls. Accordingly, we hold that the failure of Mexican law to allow for strict liability on the facts of this case does not render Mexico an inadequate forum.

(b)

Gonzalez's second contention – that the damage cap renders the remedy available in a Mexican forum "clearly unsatisfactory" – is slightly more problematic. Underlying this contention are two distinct arguments: First, Gonzalez argues that if he brings suit in Mexico, the cap on damages will entitle him to a de minimis recovery only – a clearly unsatisfactory award for the loss of a child. Second, Gonzalez argues that because of the damage cap, the cost of litigating this case in Mexico will exceed the potential recovery. As a consequence, the lawsuit will never be brought in Mexico. Stated differently, the lawsuit is not economically viable in Mexico. It follows, therefore, that Mexico offers no forum (much less an adequate forum) through which Gonzalez can (or will) seek redress. We address each argument in turn.

(i)

In addressing Gonzalez's first argument, we start from basic principles of comity. Mexico, as a sovereign nation, n5 has made a deliberate choice in providing a specific remedy for this tort cause of action. In making this policy choice, the Mexican government has resolved a trade-off among the competing objectives and costs of tort law, involving interests of victims, of consumers, of manufacturers, and of various other economic and cultural values. In resolving this trade-off, the Mexican people, through their duly-elected lawmakers, have decided to limit tort damages with respect to a child's

death. n6 It would be inappropriate – even patronizing – for us to denounce this legitimate policy choice by holding that Mexico provides an inadequate forum for Mexican tort victims. n7 In another forum non conveniens case, the District Court for the Southern District of New York made this same point observing (perhaps in a hyperbolic choice of words) that "to retain the litigation in this forum, as plaintiffs request, would be yet another example of imperialism, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation." In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December, 1984, 634 F. Supp. 842, 867 (S.D.N.Y. 1986), aff'd as modified, 809 F.2d 195 (2d Cir. 1987). In short, we see no warrant for us, a United States court, to replace the policy preference of the Mexican government with our own view of what is a good policy for the citizens of Mexico.

Based on the considerations mentioned above, we hold that the district court did not err when it found that the cap on damages did not render the remedy available in the Mexican forum clearly unsatisfactory.

(ii)

We now turn our attention to Gonzalez's "economic viability" argument – that is, because there is no economic incentive to file suit in the alternative forum, there is effectively no alternative forum. n8

The practical and economic realities lying at the base of this dispute are clear. At oral argument, the parties agreed that this case would never be filed in Mexico. In short, a dismissal on the ground of forum non conveniens will determine the outcome of this litigation in Chrysler's favor. n9 We nevertheless are unwilling to hold as a legal principle that Mexico offers an inadequate forum simply because it does not make

economic sense for Gonzalez to file this lawsuit in Mexico. Our reluctance arises out of two practical considerations.

First, the plaintiff's willingness to maintain suit in the alternative (foreign) forum will usually depend on, inter alia, (1) whether the plaintiff's particular injuries are compensable (and to what extent) in that forum; (2) not whether the forum recognizes some cause of action among those applicable to the plaintiff's case, but whether it recognizes his most provable and compensable action; (3) similarly, whether the alternative forum recognizes defenses that might bar or diminish recovery; and (4) the litigation costs (i.e., the number of experts, the amount of discovery, geographic distances, attorney's fees, etc.) associated with bringing that particular case to trial. These factors will vary from plaintiff to plaintiff, from case to case. Thus, the forum of a foreign country might be deemed inadequate in one case but not another, even though the only difference between the two cases might be the cost of litigation or the recovery for the plaintiff's particular type of injuries. In sum, we find troublesome and lacking in guiding principle the fact that the adequacy determination could hinge on constantly varying and arbitrary differences underlying the "economic viability" of a lawsuit.

Second, if we allow the economic viability of a lawsuit to decide the adequacy of an alternative forum, we are further forced to engage in a rudderless exercise of line drawing with respect to a cap on damages: At what point does a cap on damages transform a forum from adequate to inadequate? Is it, as here, $ 2,500? Is it $ 50,000? Or is it $ 100,000? Any recovery cap may, in a given case, make the lawsuit economically unviable. We therefore hold that the adequacy inquiry under Piper Aircraft does not include an evaluation of whether it

makes economic sense for Gonzalez to file this lawsuit in Mexico.

C

Having concluded that Mexico provides an adequate forum, n10 we now consider whether the private and public interest factors nonetheless weigh in favor of maintaining this suit in Texas. As noted, the district court concluded that the public and the private interest factors weighed in favor of Mexico and dismissed the case on the ground of forum non conveniens. Our review of this conclusion is restricted to abuse of discretion. See Alpine View, 205 F.3d at 220.

The district court found that almost all of the private and public interest factors pointed away from Texas and toward Mexico as the appropriate forum. It is clear to us that this finding does not represent an abuse of discretion. After all, the tort victim was a Mexican citizen, the driver of the Chrysler LHS (Gonzalez's wife) is a Mexican citizen, and the plaintiff is a Mexican citizen. The accident took place in Mexico. Gonzalez purchased the car in Mexico. Neither the car nor the air bag was designed or manufactured in Texas. In short, there are no public or private interest factors that would suggest that Texas is the appropriate forum for the trial of this case.

III

For the foregoing reasons, the district court's dismissal of this case on the ground of forum non conveniens is

AFFIRMED.

Footnotes

n1 In this opinion, we refer to the plaintiffs collectively as Gonzalez.

n2 In this opinion, we refer to the defendants collectively as Chrysler.

n3 It is undisputed that Mexico is an amenable forum because the defendants have agreed to submit to the jurisdiction of the Mexican courts.

n4 Although Mexico apparently recognizes strict liability against the defendant users of a dangerous product, it does not recognize strict liability against the manufacturer or designer of a dangerous product. See art. 19 C.C.D.F; Symposium, Part-Five: A Serious Accident Occurs in the Mexican Plant: Problems of Corporate and Product Liability, 4 U.S.-MEX. L.J. 125, 128 (1996) ("There is no cause of action under Mexican law for an injured party to sue a remote manufacturer or vendor, unless the plaintiff is in privity of contract with the defendant or can prove the manufacturer's or the vendor's negligence. Product liability is a distinctly United States concept. . . . Mexican law does have a doctrine of strict liability, but not of product liability. Under Mexico's strict liability, the defendant is normally the user (whether owner, agent or bailee) of an inherently dangerous mechanism, instrument, apparatus or substance who, with his use, injures the plaintiff") (citation omitted). Similarly, Scotland at the time of the pertinent events in Piper Aircraft did not have strict liability for the design or manufacture of dangerous products. See DAVID M. WALKER, THE LAW OF DELICT IN SCOTLAND, 614-615 (2d ed. 1981) ("Products liability came to Scotland with the Consumer Protection Act of 1987, but this was more than a decade after the operative facts in Piper.").

n5 Mexico (or, more correctly, the Mexican United States) is a federal republic. To be precise, the limitation on tort damages at issue in this case was enacted by the State of Mexico, one of the member states of the Mexican United States.

n6 See 1 JORGE A. VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS § § 1.31-32 (1998) (describing how law is made in Mexico).

n7 As one legal scholar so aptly noted: "we should have a little humility. . . . It is past time for us to get it through our heads that it is not everyone but us who is out of step." William L. Reynolds, The Proper Forum for a Suit: Transnational Forum Non Conveniens and Counter-Suit Injunctions in the Federal Courts, 70 TEX. L. REV. 1663, 1708-09 (1992) (internal quotation marks omitted).

n8 As a point that might fall in the technical category, the economic viability of a lawsuit may be more appropriate for consideration as a private interest factor, after the court has made the threshold determination that the alternative forum is both amenable and adequate. This view would seem to accord with the Eighth Circuit's decision in Lehman v. Humphrey Cayman, Ltd., 713 F.2d 339 (8th Cir. 1983). Lehman involved an Iowa plaintiff, suing in Iowa district court for the death of her husband, an Iowa citizen, in the Cayman Islands. In reversing a dismissal based on forum non conveniens, the Lehman court evaluated the private and public interest factors for and against dismissal. As one of the factors, the Lehman court considered the economic viability of the suit in the Cayman Islands, holding that "the court must be alert to the realities of the plaintiff's position, financial and otherwise, and his or her ability as a practical matter to bring suit in the alternative forum." Id. at 346. The Lehman court considered the plaintiff's willingness and ability to bring the lawsuit in the alternative forum in the context of all other private and public interest factors. See also Kryvicky v. Scandinavian Airlines Sys., 807 F.2d 514, 517 (6th Cir. 1986) (same).

We neither gainsay nor approve the holding of Lehman. We only note that it has no fit to the facts in this case where there are no other private or public interest factors pointing toward Texas and away from Mexico as the proper forum to try this case.

In passing, it should be noted that to the extent that economic viability is undermined by the cost of securing an attorney, our circuit has held that "the fact that contingent fees are legally permissible in the United States but legally impermissible in England is not a factor that controls or even significantly influences the forum non conveniens determination." See Coakes v. Arabian Am. Oil Co., 831 F.2d 572, 575 (5th Cir. 1987).

n9 This fact is not unique to this lawsuit. A survey found that between 1945 and 1985, of 85 transnational cases dismissed on the ground of forum non conveniens, only four percent ever reached trial in a foreign court. See David Robertson, Forum Non Conveniens in America and England: "A Rather Fantastic Fiction", 103 L. Q. REV. 398, 418-19 (1987).

n10 As noted, the parties concede that Mexico represents an amenable forum.

No. 01-40012

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JORGE LUIS MACHUCA GONZALEZ; MARTHA PATRICIA LOPEZ GUERRERO, Individually And As Heirs And Representatives Of The Estate Of Luis Pablo Machuca Lopez, Deceased,
Plaintiffs - Appellants

v.

CHRYSLER CORPORATION, Etc.; ET AL.,
Defendants;

CHRYSLER CORPORATION, also known as Chrysler Motors Corporation; TRW INC.; TRW VEHICLE SAFETY SYSTEMS INC., MORTON INTERNATIONAL, INC.,
Defendants - Appellees

October 9, 2002, Filed

JUDGES:
Before JOLLY, JONES, and BARKSDALE, Circuit Judges.

OPINIONBY:
E. Grady Jolly

OPINION:

ON PETITION FOR REHEARING EN BANC

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED.R.APP.P. and 5TH CIR.R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

E. Grady Jolly

United States Circuit Judge

CIVIL ACTION NO. B-98-75

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JORGE LUIS MACHUCA GONZALEZ, ET AL.,
Plaintiffs,

v.

CHRYSLER CORPORATION, Etc.; ET AL.,
Defendants.

ORDER

BE IT REMEMBERED that on February 18, 2000, the Court considered all pending motions in this case. Defendants CHRYSLER CORP., TRW, INC., TRW VEHICLE SAFETY SYSTEMS, INC., and MORTON INTERNATIONAL INC.fn1 move the Court to dismiss for lack of jurisdiction, to dismiss based on forum non conveniens, and to apply the law of Mexico.

Facts

Sometime in 1995, Mr. Machuca, Plaintiff, was in Houston, Texas. During his trip he saw advertisements for the 1995 Chrysler LHS. Liking what he saw, Mr. Machuca went to a couple of Chrysler dealerships in Houston, spoke with sales representatives in Spanish, and decided that, although he could not personally export a vehicle, he would attempt to buy one In Mexico. He did: Mr. Machuca, a longtime Chrysler customer, went to his dealer in Mexico where he learned that Chrysler did not sell the 1995 Chrysler LHS in Mexico. However, Plaintiffs were able to purchase the

1996 model year shortly thereafter.

On May 21, 1996, while driving their 1996 Chrysler LHS, the Machuca family was involved in a low-speed, two-car collision. The cars air bag deployed. As a result, Luis Pablo Machuca Lopez, the Plaintiffs' three year old son, suffered head injuries and died. The Plaintiffs, Luis's parents, filed this lawsuit individually and as heirs and representatives of Luis. They allege products liability, negligence, gross negligence, and warranties claims.

The Plaintiffs purchased their 1995 Chrysler LHS from a Chrysler dealer in Mexico. The vehicle was registered and licensed in Mexico. The injury occurred in Mexico. All of the witnesses to the accident live in Mexico. Plaintiffs are Mexican nationals who reside on Mexico.

On the other hand, Defendant CHRYSLER CORP., the manufacturer of the automobile is incorporated in Delaware with its principle place of business being Michigan. TRW, INC., is incorporated in and has its principal place of business in Ohio. Likewise, TRW SAFETY SYSTEMS is incorporated in and has its principal place of business in Ohio.fn2 MORTON INTERNATIONAL INC., is a Delaware corporation with its principal place of business in Michigan. The Defendants are amenable to service in Texas and the personal jurisdiction of this Court.

Discussion

A. Motions to dismiss for lack of jurisdiction

Defendants in this case claim that, applying Texas law to this diversity case, the Court must dismiss for

lack of jurisdiction under Section 71.031 (a)(4) of the Texas Civil Practice and Remedies Code. That section permits foreign plaintiffs to bring a cause of action In Texas if their country has "equal treaty rights" with the United States. Mexico has equal treaty rights with the United States, and Plaintiffs may being their suit in a Texas court.

The Texas Supreme Court recently decided this issue in Dubai Petroleum Co. et al. v. Kazi, et al., No. 97-1068, 2000 WL 144407 (Tex. Feb.10, 2000). The Texas Supreme Court held that §71.031 is not jurisdictional; rather, it is a statutory requirement that must be fulfilled in order to bring suit. See id. at *4. The Court then held that the International Covenant of Civil and Political Rights establishes equal treaty rights between India and the United States. The Kazis met the requirements in §71.031 and were able to bring suit in Texas.

The United States and Mexico are signatories to the International Covenant of Civil and Political Rights, the same treaty at issue in Kazi; therefore, they share equal treaty rights. See Ford Motor Co. v. Aguina, No04-97-01018-CV, 1999 WL 993758, at *7 (Tex. App. — San Antonio Nov. 3, 1999) "Because the United States and Mexico are signatories of the multilateral International Covenant on Civil and Political Rights and this treaty imparts equal treaty rights" to the citizens of both countries, we hold that the requirements of § 71.031 are fulfilled to establish the trial court's subject matter jurisdiction."). Plaintiffs satisfy the requirements of §71.031 of the Texas Civil Practice and Remedies Code and may bring suit in a Texas court. Moreover, this Court has subject matter jurisdiction pursuant to Title 28 United States Code Section 1332.

B. Forum non conveniensfn3

As the Plaintiffs correctly assert, forum non conveniens is a matter of discretion; however, it is "an exercise in structured discretion founded on a procedural framework guiding the district court's decision making process." In re Air Crash Disaster Near New Orleans, La. on July 9, 1982, 621 F.2d 1147(5th Cir. 1987) (emphasis added), vacated sub nom. Pan American World Airways, Inc. v. Lopez, 490 U.S. 1032(1989), reinstated except as to damages sub original nom. In re Air Crash Disaster Near New Orleans, La., on July 9, 1982, 883 F.2d 17 (5th Cir. 1989).fn4 Judges are not unfettered, even when deciding issues that are "discretionary."

A forum non conveniens analysis involves a three step inquiry. See Baumgart, 981 F.2d at 835. First, the Court must determine whether an alternative forum is available and adequate. Second, if an available and adequate forum exists, the Court must balance the "private interest" factors. If the private interest factors do not weigh in favor of dismissal, the Court must consider the "public interest" factors. The Court must balance private and public factors and weigh them against the Plaintiffs choice of forum.

The first step, determining whether there is an alternative forum, is a two-part inquiry. The alternative forum must be both available and adequate. See In re Air Crash, 821 F.2d at 1165. A foreign forum is available when the entire case and all parties can come within the jurisdiction of the foreign forum. See Id.; see also Syndicate 420 At Lloyd's London v. Early American Ins. Co., 796 F.2d 821, 830 (5th Cir. 1986). A foreign forum is adequate when the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court. See Seguros Comercial Americas S.A. v.

American President Lines, Ltd., 933 F. Supp. 1301, 1307 (S.D. Tex. 1996) (Seguros II); see also In re Air Crash, 821 F.2d 1165. If there is an alternative forum that is both available and adequate, the Court continues with its inquiry.

The second step in the inquiry requires the Court to balance the private interest factors. The private interest factors include 1) the relative ease of access to sources of proof; 2) the availability of compulsory process for attendance of unwilling, and the costs of obtaining attendance of willing, witnesses; 3) probability of an opportunity to view the premises, if viewing would be appropriate to the action; and 4) other factors affecting the case, speed and expense of trial, or the enforceability of a judgment if obtained.fn5 If the private interest factors weigh in favor of dismissal, the Court will dismiss the case.

If, however, the private interest factors do not weigh in favor of dismissal, the Court will then continue to the third step and balance the public interest factors. The public interest factors include 1) the administrative difficulties flowing from court congestion; 2) the local interest in having localized controversies resolved at home; 3) the interest in having the trial of a diversity case in the forum that is at home with the law that must govern the action; 4) the avoidance of unnecessary problems in conflicts of law, or in application of a foreign law; and 5) the unfairness of burdening citizens in an unrelated forum with jury duty. See Piper Aircraft, 454 U.S. at 241 n.6.

1. Availability of an adequate alternative forum

a. Availability

Mexico is an available forum. Defendants have shown that Plaintiffs have a cause of action under Mexican law. Moreover, Defendants have stated that they will submit to the jurisdiction of a Mexican court. "[D]efendant's submission to the jurisdiction of an alternative forum renders that forum available for purposes of [this] analysis." Veba-CHemie A. G. v. M/V Getafix, 711 F.2d 1243, 1245(5th Cir. 1983). Plaintiffs state that such assurances "are not binding on actions [Defendant] might take in a new suit filed in Mexico." In fact it is. This case will be dismissed on forum non conveniens grounds on the condition that Defendant submit to the jurisdiction of a Mexican court, see infra.

b. Adequacy

Mexico is an adequate forum. Plaintiff argues, without benefit of citation to factually relevant authority, that Mexican courts are not an adequate forum to hear this case. Primarily, Plaintiffs' arguments rest on the fact that under Mexican law damages are capped.. Plaintiffs also argue that the affidavit of Professor Hans W. Baadefn6 demonstrates that Plaintiffs' principal claim of design and manufacturing defect and marketing are not actionable under Mexican law. Finally, plaintiffs argue that statute of limitations presents an impediment to filing suit in Mexico. None of these arguments is persuasive.fn7

Plaintiffs argue that Mexican courts are not adequate because Mexican law limits recovery. The question is not whether a remedy in the alternative forum is adequate in the sense of being sufficient but whether it exists, and a remedy does exist under the laws of Mexico. See Seguros Comercial Americas S.A. de C.V. v. American President Lines, Ltd., 910 F. Supp. 1235, 1245 (S.D. Tex. 1995) (Seguros I) (stating that "[a]s long as

[plaintiff] is not deprived of any remedy or treated unfairly in the courts of Mexico, the comparable amount of recovery is not a factor to be addressed In this case"), vacated on other grounds 105 F.3d 108, (5th Cir. 1996) (vacating and ordering remand for the trial court to enter an order formally incorporating stipulations). Plaintiffs quote Piper Aircraft for the proposition that "where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied." 454 U.S. at 255 n.22. "Clearly unsatisfactory" is a term of art invoking a technical, not an emotional or moral, inquiry. In Piper Aircraft, the Supreme Court cited as an example of a clearly unsatisfactory remedy a case in which the trial court refused to dismiss because an Ecuadorian court would not hear the case. See id. (citing Phoenix Canada Oil Co. Ltd. v. Texaco, Inc., 78 F.R.D. 445 (Del. 1978)). Thus, the existence of a remedy, rather than the potential amount of recovery, is the focus of the inquiry. Mexico's choice to limit recoveries in tort cases does not lead the Court to conclude that Mexican courts are not adequate to hear this case.

Moreover, Plaintiffs' argument that it could not bring its principal claim of design and manufacturing defect and marketing under Mexican law is unfounded. Contrary to Plaintiffs' assertion, Professor Baade states in paragraph 19 of his affidavit that Plaintiffs would have a claim under Mexican law.fn8 Mexican law might not provide the exact claims as would American law, however, that is not a requirement. This argument was addressed by the holding of Piper Aircraft that "[t]he possibility of a change in the substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry." 454 U.S. at 247 (emphasis added) (dismissing a case on forum non conveniens grounds despite the fact that the foreign

forum did not recognize strict liability and the potential damages would be reduced).

Finally, statute of limitations, known as prescription under Mexican law, will not necessarily present an impediment to filing this lawsuit in Mexico. Under Mexican law, limitations are "proper exceptions or defenses and are waivable. See Seguros II, 933 F. Supp. at 1308. The Court will grant dismissal on the condition that Defendants waive statute of limitations defenses in a Mexican court, see infra.

The Defendants have met their burden and demonstrated that the Mexican courts are both available and adequate. This case and all of the Defendants can be brought within the jurisdiction of a Mexican court. Moreover, Plaintiffs are not in danger of being deprived of any remedy or treated unfairly. Thus, the Court concludes that Mexico is an alternative forum, both available and adequate.

2. Private interest factors

Having decided that an alternative forum exists, the Court turns to the private interest factors "weighing in the balance the relevant deference given the particular plaintiff's initial choice of forum." In re Air Crash, 821 F.2d at 1165.

A plaintiff's choice of forum is usually afforded great deference. However, "a foreign plaintiffs choice deserves less deference. See Piper Aircraft, 454 U.S. at 256. Therefore, "the burden normally on a defendant to show that the balance of private interests is strongly in its favor applies with less force when a foreign plaintiff has chosen a United States court" See De Aguilar v. Boeing, Co., 806 F. Supp. 139 143 (E.D. Tex. 1992), aff'd,

11 F.3d 55(5th Cir. 1993), cert. denied 516 U.S. 865 (1995). Because Plaintiffs are foreign citizens and residents, their choice of forum is given less deference and Defendants' burden is lessened. The Court weighs the private interest factors accordingly.

a. Relative case of access to sources of proof

In this case the sources of evidence can be found in several different locations. Information related to the design and construction of both the automobile and component parts can mostly be found in Michigan and Ohio.fn9 All of the eyewitnesses to the accident can be found in Mexico. The automobile is located in a warehouse in Harlingen, Texas.fn10 There is nothing to suggest that the Southern District of Texas is a more convenient forum than Mexico. Ease of access to all of the relevant evidence remains the same whether tried in Brownsville, Texas, or Mexico. If anything Defendants will more easily be able to access witnesses in Mexico, see infra.

b. Availability of compulsory process for attendance of unwilling and the costs of obtaining attendance of willing, witnesses

Plaintiffs have approximately twenty-seven to thirty witnesses, of whom all but one are in Mexico. Certainly there will be some witnesses in the United States, especially expert witnesses. The Court, however, believes that most of the witnesses will either be in Mexico or paid experts who will be able to travel to Mexico City. Furthermore, the Court conditions dismissal on Defendants' agreement to produce all United States witnesses within their control who have knowledge of relevant facts, see infra. This is hardly a burdensome condition for two reasons. First, it is the

Defendants who are requesting dismissal despite the Court having jurisdiction and venue. Second, and more importantly, as Defendants have stated, sending their witnesses to Mexico City is more convenient than sending them to Brownsville, Texas.

Moreover, the driver of the other car is a Mexican citizen and resident. Defendants can neither depose nor subpoena to appear nor join the other driver unless this action is brought in Mexico.

c. Probability of an opportunity to view the premises, if view would be appropriate to the action

The place of the accident is in Mexico. A jury or court would benefit from viewing the scene and conditions of the accident

d. Other factors affecting the case

Although foregoing a detailed choice of law analysis, the Court is persuaded that the law of Mexico and not Texas is most likely the law that would apply in this case see infra. Feasible as it might be with experts like Professor Baade assisting the parties and the court, applying the law of Mexico to this case would be expensive both in time and money. Obviously the courts of Mexico are far more capable of applying the laws of Mexico than is this Court.

e. The Court's conclusions as to private interest factors.

The Court concludes that the private interest factors weigh in favor of dismissal. Giving the deference due to Plaintiffs' choice of forum and the private factors, the Court finds that a trial in Mexico "will best serve the

convenience of the parties and the ends of Justice." Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518, 527(1947).

3. Public interest factors

Finding that the private interest factors weigh in favor of dismissal generally ends the inquiry; however, the Court will address the public interest factors, which also weigh in favor of dismissal." The public interest factors, listed supra B., must be weighed in light of the forum's interest "The central question a court must answer when considering the public interest [factors] is whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources to it." Neo Sack, Ltd. v. Vinmar Impex, Inc., 810 F. Supp. 829, 838(S.D. Tex. 1993). The public factors do not suggest a general nexus with the Southern District of Texas, much less the Brownsville division, sufficient to warrant retention of this case.

a. Applicable law

In a diversity action, a federal court must apply the choice-of-law rules of the state in which it sits. Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487,496 (1941). According to Texas law, "in all choice-of-law cases, except those contract cases in which the parties have agreed to a valid choice-of-law clause, the law of the state with the most significant relationship to the particular substantive issue will be applied to resolve that issue." Duncan v. Cessna Aircraft Co., 665 S.W.2d 414,421 (Tex.1984); see also Total Oil Field Services, Inc. v. Garcia, 711 S.W.2d 237 (Tex.1 986) (applying the most significant relationship test to wrongful death cases); Perry v. Aggregate Plant Prods. Co., 786 S.W.2d 21 (Tex.App.-San Antonio 1990, writ denied) (applying the

most significant relationship test to products liability case); Crisman v. Cooper Indus., 748 S.W.2d 273 (Tex.App.-Dallas 1988, writ denied)(same). Texas follows the RESTATEMENT (SECOND) OF CONFLICT OF LAWS §6, which provides the relevant factors for the Court to consider.fn12 Furthermore, section 145 lists the factual matters that a Texas court will consider when applying section 6.fn13 These contacts are to be evaluated according to their relative importance with respect to the particular issue. Furthermore, the application of the significant relationship test does not "turn on the number of contacts, but more importantly on the qualitative nature of those contacts as affected by the policy factors enumerated in Section Gutierrez v. Collins, 583 S.W.2d 312 318 (Tex.1 979).

First, the injury occurred in Mexico. Plaintiffs claim that in considering the second element, the Court should apply the law of the state where the automobile or the air bag was designed, either Michigan. Ohio, or Texas law, The Crisman and Perry decisions, supra, control this issue. In a products liability case, the place where the product enters the stream of commerce has an interest in applying its laws. The automobile entered the stream of commerce in Mexico where it was purchased. Third, Plaintiffs are Mexican citizens and residents. Defendants, although American companies, conduct business in Mexico. Finally, the relationship between these parties is focused, if anywhere, in Mexico, where the Plaintiffs bought and registered their automobile. Texas courts do not have an interest in trying this case.

Plaintiffs fail in their attempts to demonstrate a Texas connection to or interest in this case. At most they have shown that Mr. Machuca saw some advertisements and talked to a couple of dealerships in Houston, Texas; that the automobile probably passed

through Texas when it was shipped to Mexico; and that all of the Defendants have business connections to Texas. Because it can hardly be said that Texas is the forum with the most significant contacts to this case, the law of Mexico rather than Texas should apply.

b. Administrative difficulties flowing from court congestion

The Courts of the Southern District of Texas are congested with cases having a far greater nexus to this district than this case. In particular, the demands of a heavy criminal docket and the priority given to criminal cases inevitably leads to backlogs in the civil cases. Conservation of judicial resources being an important objective, it is not in the public interest to burden this court with a case bearing no impact on the forum community. See Seguros II, 933 F. Supp. at 1314.

c. Local interest in having a localized controversies resolved at home

This case involves a Mexican Plaintiff alleging a loss in Mexico. Therefore, the citizens of this district and the United States as a whole have a minimal interest in the outcome of this case. Moreover, because Mexican law applies, the decision in this case would have no precedential impact in the United States. Therefore, the Court concludes that this factor weighs in favor of dismissal. See Id.

d. Interest in having the trial of a diversity case in the forum that is at home with the law that must govern the action and the avoidance of unnecessary problems in conflicts of law, or in application of a foreign law

Although the Court performs an abbreviated but

thorough conflict of law analysis, the Court is convinced that the law of Mexico will apply to this case. In order to preserve judicial resources, this Court should not retain this case. Furthermore, the courts of Mexico will be more capable of and have a greater interest in applying the laws of Mexico.

e. Unfairness of burdening citizens in an unrelated forum with jury duty

It would be an undue burden upon the citizens selected for jury duty to devote their time and attention to deciding this case rather than the many cases with a far more compelling relationship to local interests. Jury duty is a burden that ought not to be imposed upon the people of a community that has no relation to the litigation. See Gilbert, 330 U.S. at 508-09. Texans living under American law have an innate understanding of American law. A Texas jury would not have the same understanding of Mexican law and would therefore have difficulty applying laws foreign to them. Thus, this factor also weighs in favor of dismissal.

f. The Court's conclusions as to public interest factors

The Court concludes that, like the private interest factors, the public interest factors weigh in favor of dismissal. Therefore, the Court finds that a trial in Mexico "will best serve the convenience of the parties and the ends of justice." Koster, 330 U.S. at 527.

C. Conditions of dismissal

Therefore, it is ORDERED that this case is dismissed under the following conditions:

1. Defendants shall submit to the jurisdiction of the appropriate Mexican court in which Plaintiffs have filed suit within ninety (90) days of this order of dismissal;

2. Defendants shall waive any statute of limitations or jurisdictional defenses that could be posed in the Mexican court; and

3. Defendants shall make available in Mexico all relevant documents and witnesses within its control.

Should Defendants fail to meet any of these conditions, this Court will resume jurisdiction over the case.

Conclusion

1. Defendant CHRYSLER CORP.'s motion to dismiss for lack of jurisdiction (Dkt. No. 3-1) is DENIED.

2. Defendant CHRYSLER CORP.'s motion to dismiss for forum non conveniens (Dkt. No. 3-3)is GRANTED.

3. Defendant CHRYSLER CORP.'s motion to apply the substantive law of Mexico Dkt. No. 3-4) is GRANTED.

4. Defendant TRW VEHICLE SAFETY SYSTEMS and TRW INC.'s motion to dismiss for lack of jurisdiction Dkt. No. 10-1) Is DENIED.

5. Defendant TRW VEHICLE SAFETY SYSTEMS and TRW INC.'s motion to dismiss for forum non conveniens (Dkt. No. 10-3) is GRANTED.

6. Defendant TRW VEHICLE SAFETY SYSTEMS and TRW INC.'s motion to apply the substantive law of Mexico (Dkt. No.10-4) is GRANTED.

7. Defendant CHRYSLER CORP.'s motion to change venue Dkt. No. 3-2) is WITHDRAWN At the April 12,

1999, conference, the Defendants announced that they would no longer urge this motion.

DONE at Brownsville, Texas, this 18 day of February 2000.

Hilda G. Tagle
United States District Judge

Footnotes

fn1 Defendant MORTON INTERNATIONAL, INC. moved to join CHRYSLER CORP.'s motion to dismiss. The Court GRANTED that motion at the March 26, 1999, hearing. Also TRW's motion to join CHRYSLER CORP.'s motions to dismiss (Dkt. No 10) is GRANTED by this ORDER. Therefore, the rulings in this ORDER apply to all three remaining Defendants.

fn2 TRW Safety System's principal place of business might be Michigan. Whether its principal place of business is Ohio or Michigan is irrelevant for this opinion.

fn3 The Court has subject matter and personal jurisdiction. Furthermore, venue is proper or has been otherwise waived. Through forum non conveniens "a federal trial court may decline to exercise its jurisdiction and venue, even though the court has jurisdiction and venue; when it appears that the convenience of the parties and the court and the interests of justice indicate that the action should be tried in another forum." Baumgart v. Fairchild Aircraft Corp, 981 F.2d 824, 828 (5th Cir. 1993).

fn4 Forum non conveniens is a procedural doctrines and the Fifth Circuit has held that "a federal court sitting

in a diversity action is required to apply the federal law of forum non conveniens when addressing motions to dismiss a plaintiff's case to a foreign forum." De Aguillar v. Boeing Co., 11 F. 3d 55, 58 (5th Cir. 1993), cert. denied, 516 U.S. 865, (1995).

fn5 First announced in Gulf Oil Corp v. Gilbert, 330 U.S. 501,508 (1947), these factors have been reaffirmed by more recent cases. See, e.g., Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 n.6 (1981); In re Air Crash, 621 F.2d at 1162.

fn6 Professor Baade prepared an affidavit in support of Defendants' motions to dismiss. (Dkt No. 9).

fn7 For a case in which a court of this district rejected the same three arguments, see Seguros II, 933 F. Supp. at 1308.

fn8 The Court recognizes that Professor Baade, in paragraph 20, explains that there was not a federal statutory basis for a cause of action accruing at the relevant time; however, paragraph 19 clearly states that Plaintiffs can recover under the law of the State of Mexico.

fn9 Plaintiffs, make the bald assertion that Defendants are attempting to use forum non conveniens "to make it easier for them to withhold documents and evidence of known product defects from Plaintiffs who happen to be citizens of the Republic of Mexico." Plaintiffs response (Dkt. No 7). The Court declines to accept as true the assertion that Defendants are making such an attempt.

fn10 The Court assumes that the automobile was moved to Texas to facilitate this lawsuit. It is not imperative that it be here. Furthermore, the fact that it

was transported here indicates that it is mobile and could be returned to Mexico if required.

fn11 There are numerous Fifth Circuit opinions standing for the proposition that a district court finding the private interest factors weigh in favor of dismissal need not proceed to the public interest factors. See, e.g., Baumgart, 981 F.2d at 837 (finding an analysis of the public factor unnecessary because the private factors weighed in favor of dismissal); Empresa Lineas Maritimas Argentinas, S.A. v. Schichau-Unterweser, A. G., 955 F.2d 368,376(5th Cir. 1992) (same). Out of an abundance of caution, the Court considers the public interest factors.

fn12 Section 6 lists several factors to be considered. They include:

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,
(b) the relevant policies of the forum,
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.

fn13 Section 145 lists several factors to be

considered. They include:

(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in S 6.

(2) Contacts to be taken into account in applying the principles of S 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,

(b) the place where the conduct causing the injury occurred,

(c)the domicile, residence, nationality, place of incorporation and place of business of the parties, and

(d) the place where the relationship, if any, between the parties is centered.

STATUTORY PROVISIONS INVOLVED

Section 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

Supreme Court, U.S.
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No. 02-1044

IN THE

Supreme Court of the United States

JORGE LUIS MACHUCA GONZALEZ, *et al.*,

Petitioners,

v.

DAIMLERCHRYSLER CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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22 pp

QUESTION PRESENTED

Did the Fifth Circuit correctly hold that there was no abuse of discretion in the district court's decision to conditionally dismiss, on *forum non conveniens* grounds, a suit by Mexican nationals involving a wreck with another Mexican national in Mexico and asserting product liability claims regarding a vehicle purchased in Mexico?

CORPORATE DISCLOSURE STATEMENT

DaimlerChrysler Corporation, formerly known as Chrysler Corporation, is wholly owned by DaimlerChrysler Motors Company, L.L.C., which is wholly owned by DaimlerChrysler North America Holding Corporation, which is wholly owned by DaimlerChrysler AG, which is publicly traded.

Autoliv ASP, Inc., formerly known as Morton International, Inc., is wholly owned by Autoliv, Inc., which is publicly traded.

On January 1, 2003, the automotive divisional assets and liabilities of the former TRW Inc. were transferred to TRW Automotive US LLC. Both TRW Automotive US LLC and TRW Vehicle Safety Systems Inc. are wholly owned by TRW Automotive Inc., which is privately owned.

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STATEMENT OF JURISDICTION

While the petition was filed timely, respondents asserted below that appeal to the court of appeals was not timely and filed a motion to dismiss on that basis. The Fifth Circuit denied the motion to dismiss without comment and respondents have not pursued the issue.

STATUTORY PROVISIONS INVOLVED

Appended to this brief are Tex. Civ. Prac. & Rem. Code sections 71.031, relied upon but miscited in the petition (pp. 3, 9), and 71.051, the Texas *forum non conveniens* statute.

REASONS FOR DENYING THE PETITION

A. Both lower courts properly followed and applied the law of *forum non conveniens* as set forth in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).

The trial court decided that Mexico was the appropriate forum for a suit by two Mexican citizens to recover damages for the death of their son, also a Mexican citizen, in an automobile accident caused by another Mexican citizen on a Mexican road. Petitioners asserted a defect in their vehicle, purchased from their long-time dealer located two blocks from Mr. Machuca's office in Mexico City, and chose to file their suit in Texas. The only connection with Texas ever shown was that Mr. Machuca window-shopped and test drove an earlier year's model of the same vehicle on a trip to Houston, with full knowledge that it would be illegal for him to buy a car in Texas for export to Mexico.[1]

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1. Petitioners did not sue any dealer, in Houston or elsewhere.

The district court's ruling was a legitimate exercise of its discretion. Both it and the Fifth Circuit faithfully followed the *forum non conveniens* analysis set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and *Piper Aircraft*. Indeed, *Piper Aircraft* itself resolves every issue raised in the petition. The basic complaint is that the law of Texas provides a potentially greater monetary recovery than that of petitioners' home. This is true in most *forum non conveniens* cases: it is a rare plaintiff who chooses to sue in any forum other than that where he thinks his potential recovery is greatest. It was true in *Piper Aircraft* and this Court's express ruling was that a plaintiff may not defeat a motion to dismiss on *forum non conveniens* grounds: ". . . merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiffs than that of the present forum." *Piper Aircraft*, 454 U.S. at 247.

The remedy provided by Mexico is quite similar to that provided by Scotland at the time *Piper Aircraft* was decided, and that remedy is what petitioners' own legislature has deemed appropriate. Like Scotland at the time (and like Michigan, where the vehicle in question was designed), Mexico does not recognize a strict product liability cause of action. Like Scotland, Mexico also places limits on the amount of recovery in a death action. University of Texas Law Professor Hans Baade explained in his affidavits in support of the motion to dismiss that Scotland's law, which limited recovery to "loss of support and society," typically resulted in awards of 1,000 pounds or less, and compared that with the Mexican law, which limits recovery to the value of two years of the decedent's wages or, in the case of a decedent who was not employed, two years of the minimum wage.

Mexico provides a remedy, there is no suggestion that petitioners would be treated unfairly in their own home courts, the defendants stipulated to amenability to process in Mexico, and dismissal was conditioned on defendants' waiver of any limitations or jurisdictional defenses. Pet. App. C., p. 30a. Under established law, Mexico is therefore an available and adequate alternate forum. Unless our federal courts are to become the moral arbiters of the adequacy of the remedies every sovereign in the world provides its own citizens, the established law should not be changed.

Petitioners appear to argue (Pet., p. 9) that Tex. Civ. Prac. & Rem. Code § 71.031(a)(4) (opening state courts to citizens of countries with equal treaty rights) entitles them to maintain their suit in Texas. They do not explain how a state statute could foreclose a federal court's authority to effect foreign transfers on *forum non conveniens* grounds. That authority derives from the court's inherent power to control the administration of justice in litigation pending before it and prevent its own process from becoming an instrument of abuse or oppression. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 828 (5th Cir. 1993), *cert. denied*, 508 U.S. 973 (1993). In any event, petitioners' premise is faulty. While foreign nationals may institute suit in Texas courts if they meet the requirements of section 71.031, maintenance of such a suit is subject to the *forum non conveniens* analysis set forth in Tex. Civ. Prac. & Rem. Code § 71.051(a). That analysis is identical to the one set forth by this Court in *Gilbert*.

B. The opinion below creates no conflict between circuits.

The differences between the cases cited as conflicting — *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042 (1984); *Wilson v. Humphreys (Cayman), Ltd.*, 916 F.2d 1239 (7th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991); and *Irish Nat. Ins. Co., Ltd. v. Aer Lingus Teoranta*, 739 F.2d 90 (2d Cir. 1984) — and this case are apparent. In both *Lehman* and *Wilson*, the plaintiffs were U.S. citizens, whose choice of a permissible forum is entitled to great weight in the *forum non conveniens* analysis. This is simply not true in the case of foreign nationals imposing on American courts for the purpose of evading the laws of their own home. *Piper Aircraft*, 454 U.S. at 249 n.15 & 255-6. In *Irish Nat'l*, all the disputed facts and evidentiary issues centered on Kennedy Airport, in the selected forum. Here, pertinent events or evidentiary issues have nothing to do with the Southern District of Texas. The wreck was in Mexico, the vehicle and components involved were not designed in Texas, the vehicle was manufactured in Canada, and the vehicle was purchased in Mexico, where it entered the stream of commerce, thereby giving Mexico the most significant interest in this case. *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242, 250 (5th Cir. 1990); *Crisman v. Cooper Industries*, 748 S.W.2d 273, 277-78 (Tex. App. — Dallas 1988, writ denied).

The *forum non conveniens* analysis is highly fact sensitive. Each case is to be decided on its own facts and by weighing the private and public interest factors implicated by those facts. Given the plain difference in the dispositive facts between this case and those claimed to conflict, petitioners' contention lacks substance.

C. There is no policy justification for changing the law set forth in *Piper Aircraft*.

Petitioners argue (Pet., p. 9) that the interests of global markets and of holding domestic companies responsible for defective export products compel the conclusion that their suit should have proceeded in Texas. The arguments are empty. The latter argument was expressly rejected in *Piper Aircraft*, 454 U.S. at 260-61, and the former is no more than an invitation for the federal courts to become the forum for the world, sitting in judgment of the remedies provided by other nations. How an American ruling that Mexico's laws are not adequate remedies for its own citizens would help trade between the nations is a mystery. The First Circuit put it nicely in rejecting a similar argument in *Howe v. Goldcore Investments, Inc.*, 946 F.2d 944, 950 (1st Cir. 1991), *cert. denied*, 502 U.S. 1095 (1992):

> The growing interdependence of formerly separate national economies, the increased extent to which commerce is international, and the greater likelihood that an act performed in one country will affect citizens of another, all argue for expanded efforts to help the world's legal systems work together, in harmony, rather than at cross purposes. To insist that American courts hear cases where the balance of convenience and the interest of justice require that they be brought elsewhere will simply encourage an international forum-shopping that would increase the likelihood that decisions made in one country will cause (through lack of awareness or understanding) adverse effects in another, eroding uniformity or thwarting the aims of law and policy.

D. The public and private interest factors point unambiguously to Mexico.

Petitioners do not seem to contest the weighing by the district court of the traditional *forum non conveniens* factors. Nevertheless, with an abuse of discretion standard of review, it is worthy of note that the trial court properly stated, weighed, and discussed each of the *Gilbert* factors, concluding that none of them favored Texas as the more convenient forum and that virtually all plainly favored Mexico. Pet. App. C.

Among the more important factors in the trial court's analysis were:

- All but one of petitioners' twenty-seven to thirty witnesses were in Mexico. Pet. App. C., p. 24a.

- It was easier for American defense witnesses to travel to Mexico City than to Brownsville, Texas, the location of the trial court. *Id.*, p. 25a.

- The driver of the other car (against whom petitioners instituted legal action in Mexico) was not subject to process in Texas and could not be joined or subpoenaed to appear outside Mexico. *Id.*

- Mexican law would apply to the case, and would be more easily applied by a Mexican court. *Id.*, pp. 25a – 28a.

- The forum court's docket is notoriously congested already, largely with criminal cases arising along the international border. *Id.*, p. 28a.

- A Texas jury should not be burdened with deciding a case with no relationship to Texas and governed by Mexican law. *Id.*, p. 29.

It cannot be said that the district court did not analyze the appropriate factors, or that it abused its discretion in weighing those factors. The court of appeals properly affirmed that exercise of discretion, and there is nothing unique about this case justifying this Court's review. This is a Mexican case and belongs in a Mexican court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — STATUTES INVOLVED

LIABILITY IN TORT **§ 71.031**
Title 4

SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

§ 71.031. Act or Omission Out of State

(a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

SUBCHAPTER D. FORUM NON CONVENIENS

§ 71.051. Forum Non Conveniens

(a) With respect to a plaintiff who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice a claim or action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the claim or action in whole or in part on any conditions that may be just.

(b) With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that:

(1) an alternative forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiffs claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection.

(d) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(f) A court may not stay or dismiss a claim or action pursuant to Subsection (b)

if a party opposing the motion tinder Subsection (b) alleges and makes a prima facie showing that an act or omission that was a proximate or producing cause of the injury or death occurred in this state. The prima facie showing need not be made by a preponderance of the evidence and shall be deemed to be satisfied if the party produces credible evidence in support of the pleading, which evidence need not be in admissible form and may include affidavits, deposition testimony, discovery responses, or other verified evidence.

(g) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) In this section:

(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the

specified political subdivision in bad faith for purposes of avoiding the application of this section.

(2) "Plaintiff' means a party seeking recovery of damages for personal injury or wrongful death. In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery. The term does not include a counter-claimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section.

(i) This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.